UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/192
4 March 1998
ENGLISH
ORIGINAL: ARABIC AND ENGLISH

LETTER DATED 4 MARCH 1998 FROM THE PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. In reference to our letter dated 2 March 1998 (S/1998/179) relating to the judgments issued by the International Court of Justice on 27 February 1998 with regard to the two cases presented to the Court by the Libyan Arab Jamahiriya (Libyan Arab Jamahiriya v. the United States of America and Libyan Arab Jamahiriya v. United Kingdom of Great Britain and Northern Ireland) concerning the interpretation and application of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation related to the tragic incident involving Pan Am flight 103 over Lockerbie.

2. The above-mentioned judgments contained principles relating to basic questions which can be summarized as follows:

(a) That there is a "dispute" between the two parties in this case on the interpretation and application of the 1971 Montreal Convention;

(b) That the Court has jurisdiction over the "dispute" based on article 14, paragraph 1, of the Convention;

(c) That the requests of the Jamahiriya are admissible, notwithstanding the adoption of Security Council resolutions 748 (1992) and 883 (1993), and, as such, the Court rejects the motion for inadmissibility submitted by the two defendants;

(d) The Court also rejected the objection related to considering the Libyan requests as invalid and irrelevant following the adoption of the above-mentioned Security Council resolution, since this is immaterial under the circumstances surrounding the motion in question.

3. It is well-known that the Lockerbie question started towards the end of 1990 when the United States, the United Kingdom and France claimed that certain Libyan elements were involved in terrorist actions against civil aviation. The three countries then presented Libya with requests relating to certain

questions, including the need for Libya to surrender two of its citizens to the United Kingdom and the United States for trial before British or American courts. Libya rejected that request based on the fact that it contradicts the norms of international law and its own internal laws, and, on 3 March 1992, Libya resorted to the Court asking for its opinion on the interpretation and application of the Convention.

4. The two countries refused to accept that approach and took the matter to the Security Council, where they managed to get the Council to adopt two resolutions on the same question, resolutions 748 (1992) and 883 (1993), on which they later based their charge that the Court has no jurisdiction in that matter. The two Security Council resolutions responded to the demands of the United Kingdom, the United States, and France, moreover, imposed economic sanctions against Libya relating to civil aviation, certain financial and diplomatic restrictions and a prohibition on certain equipments.

5. Though the motion was before the Court, the parties to the dispute continued to deal with the subject of the dispute, in accordance with the interpretation of each of them of the provisions of the Convention and the relevant Security Council resolution in the following manner:

(a) Libya declared its condemnation of international terrorism, disavowing terrorism and terrorists. Libya also announced that it had not offered and would not offer any assistance to any terrorist elements or groups. This Libyan position has been recorded in official United Nations documents;

(b) Libya declared its acceptance of and readiness to cooperate with the French judicial authorities in their investigation of the incident involving the UTA flight over the Niger. This has been carried out in a satisfactory manner, with the French investigating judge in charge of the matter;

(c) Libya submitted initiatives to all international forums, including the League of Arab States, the Organization of African Unity and the Organization of the Islamic Conference, on how to deal with the Lockerbie question in a way that would guarantee the correct application of international law and local legislation. These international forums have adopted resolutions endorsing Libya's initiative and have called for the lifting of sanctions;

(d) France, on its part, said that whatever related to its request in Security Council resolutions had been satisfactorily implemented, enabling the investigating judge to carry out all the investigations he wanted inside Libya and to receive all the information he requested. He also was able to interview witnesses and managed to fully complete his investigation in Libya, in full freedom, with great assistance from judicial and security authorities in Libya;

(e) The United States and the United Kingdom insisted on the implementation of the provisions of the Security Council resolutions which call on Libya to hand over the two suspects, despite the fact that this has been the primary cause and the main subject of the motion filed by Libya before the Court, out of a belief by the defendants that their arguments about the inadmissibility of the motion and the non-jurisdiction of the Court would be accepted by the Court. As a result, the sanctions contained in the two Security

Council resolutions remained in effect, being renewed by the Council every 120 days for the past six years, during which the Libyan Arab people suffered great losses, and the economies of the region and its interrelationships have been negatively affected to a great extent.

6. Of course, Libya asked the Security Council, when it started looking into the Lockerbie question, to order the parties to resort to arbitration or to the Court in order to try and settle their dispute peacefully, in accordance with the provisions of Article 33 of the Charter. However, both the United Kingdom and the United States claimed, at that time, that the question was not a legal dispute and as such lay outside the competence of the Court, and also that it had nothing to do with the provisions of the Convention, but was a matter relating to the maintenance of international peace and security which could be dealt with under Article 24 of the Charter. That was the position on which they built their case as regards to the motions filed by Libya before the Court, and which prompted them to challenge the judicial mandate and jurisdiction of the Court. In its judgment, the Court rejected that erroneous view by confirming that it has jurisdiction over the case and that it was competent to consider it. The Court added that it was a matter of interpreting and applying an international convention, which was a legal matter that should be settled peacefully through negotiation, arbitration or the international judiciary system represented in the Court.

7. Since this is the case, the right thing, which the Court confirmed, is that the primary jurisdiction in the subject matter of the dispute is that of the Court and not of the Security Council.

8. There is no denying that a new situation has evolved since the issuance of the two above-mentioned judgments by the Court. This new situation should be binding to all United Nations organs and their members, taking into consideration the fact that the Court is the principal judicial organ of the United Nations (Article 92 of the Charter):

(a) On one hand, each Member of the United Nations should comply with the decisions of the Court in any case to which it is a party (Article 94, paragraph 1, of the Charter). Thus, the United Kingdom and the United States should be bound by the contents of the decision, namely, that there is a "dispute" over the interpretation and application of the Convention between them and Libya and that the Court has jurisdiction in considering that dispute, and also that the Security Council resolutions have no influence on Libya's demands;

(b) On the other hand, the decision of the Court has a binding force between the parties and in respect of that particular case on which the decision was taken (Article 59 of the Statute of the Court). Such judgment is final and without appeal (Article 60 of the same Statute);

(c) Thirdly, the Security Council may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment (Article 94, paragraph 2, of the Charter). This means that despite the fact that both the Charter and the Statute confirm that each party to the dispute must comply with the decision of the Court, the fact is that the Charter gives the Security Council the power to adopt a resolution containing the

measures it deems necessary to give effect to the judgment to make such a judgment binding on all Members of the United Nations and in the dispute on which the judgment was rendered.

9. Based on the above-mentioned considerations, and in application of the legal norms referred to in the previous paragraphs, we can reach the following conclusions:

(a) That the dispute between Libya and the United States and the United Kingdom is a legal dispute in which the Court has jurisdiction, in accordance with the Charter and the Statute of the Court. As such, the parties to this dispute must comply with the two judgments rendered in this respect. No one of them may take unilateral or multilateral measures except through the Court, and since they are parties to the dispute, they have to abstain from voting on any decision or recommendation relating to this dispute (Article 27, paragraph 3, of the Charter);

(b) Members of the United Nations, parties to the Statute of the International Court of Justice, are bound by the provisions of the Charter relating to the Court and the provisions of the Statute of that Court, especially with regard to the judgments of the Court and their binding character on all parties to the dispute;

(c) The Security Council must, by virtue of the provisions of the Charter, take the recommendations and measures needed to give effect to this judgment, whether or not it was requested to do so;

(d) Libya, as a party to the dispute, has, since the beginning, taken all the steps needed to solve it peacefully, has implemented all requests by international organizations, including the Security Council, in relation to it, except for those requests relevant to the interpretation and application of the Convention, on which it resorted to the Court, in accordance with the text of Article 33 of the Charter and article 14, paragraph 1, of the Convention, and was vindicated by the Court, which agreed with it in this respect;

(e) The sanctions provided for in Security Council resolutions 748 (1992) and 883 (1993) have become irrelevant and moot, since the Court has accepted jurisdiction in the matter on which the resolutions were based.

10. It is established that Libya has been the first to resort to the Court. The last two decades have witnessed several occasions in which Libya resorted to the Court in observance of the norms of international law and the Charter, relating to the settlement of disputes by peaceful means and in accordance with the Statute of the Court and its rules of procedures. The judgments rendered by the Court never faced any difficulty or any obstacles in their implementation. This conduct has resulted in the stability of Libya's international relations, especially with neighbouring countries. When Libya resorted to the Court in the Lockerbie question, it did so in implementation of a policy based on respect for the norms of international law, the Charter and the Statute of the Court, in spite of the intransigence and the injustice which was inflicted upon it and its neighbours as a result of the actions taken by its opponents in the two cases, who persevered in their disobedience of the law and their steering away from the

spirit of the Charter, hurting international peace and security. The two previously mentioned judgments rendered by the Court are a vindication of our conduct and should convince the other parties to do likewise.

11. In view of the pronouncements of the other parties in the aftermath of the two judgments, and their comments on them, the Libyan Arab Jamahiriya is submitting this memorandum to the Security Council to request the following:

(a) That the Council take the necessary measures to give effect to the two judgments rendered by the International Court of Justice on 27 February 1998, which are referred to above, including:

(i) First: The Council should promptly and urgently refrain from renewing the sanctions imposed on the Libyan Arab Jamahiriya pursuant to resolutions 748 (1992) and 883 (1993), including the air embargo, the reduced diplomatic representation, the freezing of money and assets, and prohibiting the importation of equipment, machines and weapons;

(ii) Second: In substance, the two resolutions mentioned above should be rescinded, as they relate to the imposition of sanctions on the Libyan Arab Jamahiriya, including the air embargo, the reduced diplomatic representation, the freezing of money and assets, and prohibiting the importation of equipment, machines, and weapons. Both these resolutions should be considered null and void;

(iii) Third: The two cases before the International Court of Justice should be considered the only peaceful means for settling the dispute between the parties, and the Council should call on them not to take any unilateral or multilateral measures until the Court renders its final judgment;

(iv) Fourth: As an interim measure, the Council should suspend the implementation of the two resolutions referred to above, inasmuch as they relate to the sanctions imposed against the Libyan Arab Jamahiriya, including the air embargo, the reduced diplomatic representation, the freezing of money and assets, and prohibiting the importation of equipment, machines and weapons until the final verdict of the Court on the dispute.

12. A positive response by the Security Council to the above-mentioned requests would reflect an appreciation of the two judgments of the Court referred to above. Also, it would reflect respect for the rule of law, an enhancement of the principles of the United Nations and a response to international public opinion expressed through the international organizations mentioned in this memorandum. Such a response would lift from the shoulders of the Libyan people and the peoples of the region the effects of a tragedy that has lasted for six years, during which they have suffered many harmful effects and tremendous difficulties.

13. Libya believes that these two judgments by the International Court of Justice pave the way for a definitive settlement of the Lockerbie dispute, and Libya hereby declares, once more, its continued acceptance of the initiatives of

the international forums, including the League of Arab States, the Organization of African Unity, the Organization of the Islamic Conference, and the Movement of Non-Aligned Countries, which were presented to the Security Council in order to assure the effective implementation of the international and national laws.

14. In conclusion, Libya most emphatically repeats before the Security Council and to the entire world that it was not responsible for the tragic destruction of the Pan Am jet over Lockerbie and the horrendous loss of innocent human beings resulting therefrom. If the United States and the United Kingdom really believe in good faith that they actually have possession of some circumstantial evidence that somehow links Libya to the incident, then these two States are obligated to bring their so-called evidence to the International Court of Justice in accordance with the binding rules of international law and the normal practice for resolving serious legal disputes between sovereign and civilized States.

15. I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Abuzed Omar DORDA
Ambassador
Permanent Representative